PLANNING COMMISSION MINUTES

February 23, 2000

CALL TO ORDER: Chairman Dan Maks called the meeting to order at 7:06 p.m. in the Beaverton City Hall Council Chambers at 4755 SW Griffith Drive.

ROLL CALL: Present were Chairman Dan Maks, Planning Commissioners Vlad Voytilla, Eric Johansen, Betty Bode, Chuck Heckman, Tom Wolch and Sharon Dunham.

Development Services Manager Irish Bunnell, Senior Planner Steven Sparks, AICP, Assistant City Attorney Ted Naemura and Recording Secretary Sandra Pearson represented staff.

The meeting was called to order by Chairman Maks, who presented the format for the meeting.

VISITORS:

Chairman Maks asked if there were any visitors in the audience wishing to address the Commission on any non-agenda items. There were none.

NEW BUSINESS:

PUBLIC HEARING:

Chairman Maks opened the Public Hearing and read the format for Public Hearings. There were no disqualifications of the Planning Commission members. No one in the audience challenged the right of any Commissioner to hear any of the agenda items.

A. **APP 2000-0001 – WALL AND ROOF SIGN APPEAL**

The submitted application is an appeal of Planning Director's Interpretation number PDI 99-00002. PDI 99-00002 specifies what constitutes a wall sign and what constitutes a roof sign. The specific sign example used in PDI 99-00002 is a sign that extends above the top-most vertical portion of an awning. A sign that extends above the top-most vertical portion of an awning is deemed to be a roof

sign and not a wall sign. Roof signs are not permitted in Beaverton. This interpretation applies to all signs in the City of Beaverton. The specific referenced site is in the Neighborhood Service zone, is located at Hong Kong Marketplace at 12050 SW Allen Boulevard. Map 1S1-22BB, Tax Lot 100.

Chairman Maks reminded the Commissioners that they are reviewing an appeal of the Planning Director's interpretation, emphasizing that they are dealing with words, not a specific site, sign or wall, and that their opinion will have a citywide effect and/or consequence.

Senior Planner Steven Sparks presented the Staff Report, noting that the example which resulted in the request for an interpretation, and later the appeal of the interpretation, is available. He observed that Development Services Manager Irish Bunnell is present to review some of the history of this particular interpretation, noting that the diagram on the easel (Staff Exhibit 'A') should assist in the explanation. He clarified that the decision that had been made was to determine exactly what constitutes a wall sign and what constitutes a roof sign. As it applies to awnings, the current code is silent with respect to allowing signs on awnings, and Mr. Bunnell will attempt to explain this history. He noted that the code defines an "awning" as "a roof-like structure of fabric stretched over a rigid frame projecting from the elevation of a building designed to provide continuous overhead weather protection". He noted that the code defines a "canopy" as "a roof-like structure projecting from the elevation of a structure designed to provide overhead weather protection that maintains at least an eight foot clearance above the ground". Because the specific example is not a fabric projection off of the building, it could be defined as a canopy, although signage for canopies and awnings is reviewed similarly.

Development Services Manager Irish Bunnell discussed the procedure through with the City of Beaverton has addressed signs on structures such as canopies and awnings over the past 16 years. He provided an illustration (Staff Exhibit 'A') indicating an awning or a canopy, noting that in some instances the structure is actually heavier than a normal awning or canopy. He explained that the current code has no language to provide for signage on structures such as this, and clarified what portions of a structure constitute the wall, the roof and the eave, emphasizing that signs above the eave are prohibited. The wall is the only location where a sign may be placed on these three architectural features.

Mr. Sparks concluded that Mr. Bunnell's statements had explained the basis of their interpretation.

Commissioner Heckman questioned whether awning and canopy should be considered as one versus the other or are the terms interchangeable.

Mr. Bunnell clarified that the difference is between the two definitions of materials that the structure is made out of, specifically the awning being described

as a fabric structure, while the canopy does not use the word fabric. He noted that for the purposes of this particular interpretation on this appeal, both awning and canopy are very similar in structure and the material is irrelevant – the issue is what portions of the structures are wall and what portions would be considered the roof area.

Commissioner Heckman observed that he had interpreted this slightly differently, emphasizing that there is a difference between the two words and that the code is very specific in regard to awning.

Mr. Bunnell pointed out that there is no language in the sign regulations addressing signage on either awnings or canopies, which creates a problem.

Commissioner Heckman questioned whether it actually makes any difference whether a structure is an awning or a canopy.

Mr. Bunnell noted that while the particular structure that the appellant has brought forward could be defined under these definitions, the intent of the Planning Director's interpretation is to apply citywide to any similar structure.

Commissioner Johansen questioned approximately how many times Mr. Bunnell has been requested to make this determination.

Mr. Bunnell responded that he has received two written requests, with slightly different language, basically asking what is a wall and what is a roof.

Commissioner Johansen mentioned that several other signs at this location appear to be in conformance.

Chairman Maks reminded Commissioner Johansen that this discussion does not involve a particular site at this time.

Mr. Bunnell informed Commissioner Johansen that although he has received only two written requests for this interpretation, this question is generally asked verbally at the Planning Counter several times a week, if not daily.

APPELLANT:

PEGGY HENNESSY, P. O. Box 86100, Portland, OR 97286, representing Reeves, Kahn & Eder, Attorneys for the appellants, CMR/Columbia, Inc., d/b/a Columbia Neon and the Oregon Electric Sign Association, appeared in support of the appeal of the Planning Director's interpretation of the sign code.

LINDA PEPLINSKI, 1820 East Burnside, Portland, OR, representing Columbia Neon, appeared in support of the appeal of the Planning Director's interpretation of the sign code.

DARRYL PAULSEN, 9160 SE 74th Avenue, Portland, OR 97206, representing the Oregon Electric Sign Association, appeared in support of the appeal of the Planning Director's interpretation of the sign code.

TOM KELJO, 436 SE 12th Avenue, Portland, OR 97214, representing the Oregon Electric Sign Association, appeared in support of the appeal of the Planning Director's interpretation of the sign code.

Ms. Hennessy clarified that the request for a Planning Director's interpretation was for a site-specific interpretation and that their presentation is geared towards this specific site.

Noting that this will limit her presentation, Chairman Maks reminded Ms. Hennessy that this particular appeal is not site-specific, but an appeal of the Planning Director's interpretation of wall sign and roof sign, and is not site-specific. Observing that this appeal had been driven by an application, he pointed out that a director's interpretation of the code was requested on that application and she had appealed his interpretation of the code, on a citywide basis – not site-specific.

Ms. Hennessy stated that for purposes of their presentation, the appellant would utilize a specific site for illustration.

Chairman Maks commented that the appellant should utilize more than one site and in a manner similar to this, emphasizing that this interpretation must be made from a global aspect, as it will apply to all other sites as well.

Ms. Hennessy informed Chairman Maks that the appellant understands the issue and will address their comments to the global aspects of the interpretation as they apply citywide.

Ms. Hennessy referred to an illustration, noting that when dealing with a situation of a flat roofed building that is eighteen feet high that happens to have a protective covering for pedestrians and does not cover a building or structure, the City does not allow a sign that extends above the flat face of the awning. She expressed her opinion that this interpretation is not consistent with the ordinary definition of the word "roof", or with the City's prior interpretation of roof sign. She argued that in addition, this interpretation actually penalizes the property owner for providing a canopy or awning for pedestrians, because this restricts the height of the sign that would otherwise be allowed. She explained that the appellant would like the Planning Commission to determine that a roof actually means a roof – something that is over a building or structure. She explained that the code defines roof signs as signs extending above the eaves of a roof, noting that this makes sense for sloped roofs, where the goal is to prevent something from going up with the roof as a backdrop, and going above that line of the eaves.

She expressed her opinion that it does not make sense for a flat roof building, noting that this discrepancy had led to the initial Planning Director's Interpretation referred to earlier, which is said to be consistent with this one. She pointed out that in the 1998 decision, there had been a specific finding that a roof sign is a sign, which extends above the height of the roof in the event of a flat roof. She stressed that this is the end of what a flat roof does and where the roof comes in, or above the eaves of a roof, in the event of a sloped roof. She noted that a building with a flat roof does not even involve eaves. She stated that the prior interpretation had involved the definition of "wall" and whether a parapet, which extends above the roof, is a continuation of the wall, if the roof is actually lower and behind it. For that purpose, the 1998 Planning Director's Interpretation made sense and is not contrary to her argument today. She emphasized that this is not a second request for the same interpretation. She observed that a sign that extends even six inches above the wall of the awning of that illustration, it is still five feet below the roof and does not violate the policies or the code, especially under the prior interpretation. Noting that the Planning Director stated that he is relying on the dictionary definitions of roof, eaves and wall, she pointed out that the meaning of those words as evidenced by dictionary definitions does not support his conclusion that the sign is a roof sign. She stated that his entire interpretation hinges on this fiction about eaves and awnings, when the actual language of what he found is: "where an awning has been added to the wall of an existing building, the vertical portion of the awning is determined to be a wall, the sloped portion of the awning is determined to be a roof, and the point at which they meet is determined to be an eave". The roof, according to the Planning Director is "the outside cover of a building or structure" – that is the dictionary definition. She noted that the roof of issue in the appellant's case is the outside cover of a flat roofed building. The awning does not cover any part of the building or structure – it covers the sidewalk, and therefore can not be considered a roof. She added that the vertical portion could not be deemed a wall because under the dictionary definition, a wall will connect a floor to a ceiling, or a foundation to a roof. In this case, neither of these is present – there is a 3-1/2 foot wall suspended in space. She expressed her opinion that this doesn't make sense, even if one does accept the roof and wall fiction of the awning. While eaves, by definition, overhang, the eave does not overhang. She pointed out that the earlier distinction had been due to a sloped roof versus a flat roof. She concluded that their position based upon the dictionary definitions, which have been adopted, is that they do not support the interpretation that an awning includes all these components of a building, and is, in and of itself, a roof, with walls and eaves. She stated that this is internally inconsistent if one looks at the definitions and attempts to apply them in this manner. She emphasized that City policy and precedent must establish clear and objective standards for applicants. She pointed out that past history, based upon what has been approved throughout the City, the language of the code and prior interpretations that state that a flat roof is a flat roof should be reliable. An applicant should not be informed that their awning would prohibit them from erecting a sign. She discussed several options available to the appellant, specifically installing a piece of fabric from the top of the flat

roof to the top of the sign, which would comply with the ordinance; or cut out a section of the awning and install it on the flat wall of the building up to 18 feet high. She noted that neither provide any benefit for pedestrians and that neither are architecturally sound options. She noted that her interpretation of prohibiting roof signs would be to prohibit something that actually sticks out above the roof. She argued that the Planning Director's interpretation is incorrect, particularly in light of the dictionary definitions and past practices. She emphasized that applicants need to have clear standards they can rely on. She noted that their presentation would provide examples of uniformly approved signs that extend up to the flat roofs.

Chairman Maks questioned whether the appellant prefers questions now or all at the end of the presentation.

Ms. Hennessy stated that the appellant is open to handle this in the manner most helpful to the Planning Commission in understanding their position.

Observing that the presentation may resolve some of the questions, Commissioner Heckman suggested postponing questions until after the presentation.

Noting that signs are sometimes installed without proper authorization, Chairman Maks reminded the appellants that they should be 100% certain that samples are signs that have actually been approved through the City's permit process.

Ms. Peplinski provided copies of a map that is a corrected version of the map included in her site-specific packet.

Observing that by allowing this map he is compromising the rules, Chairman Maks informed Ms. Peplinski that this hearing would be run by the book. He added that although it is possible she has crossed the edge of the book, he would allow this map.

Ms. Peplinski discussed the map, the tenant space, and the footprint of the building, which defines the wall area of the building. She added that the highlighted section is that portion of the footprint, which is occupied by a particular tenant. She mentioned a recap in the Staff Report, specifically a statement that the company she represents being told to do one thing and then doing the opposite. She noted that she has been dealing with this particular issue for two years, adding that she would like to provide the background of her history on this issue.

Referring to her appeal, Chairman Maks reminded Ms. Peplinski that tonight's discussion would be solely limited to that appeal, which is the issue of wall sign and roof sign.

Ms. Hennessy clarified for the record that this indicates that the Planning Commission does not intend to consider the first page or two of the Staff Report that involves the history of this application and prior violations of non-conformity.

Chairman Maks confirmed that the discussion is limited to what the appellant is supposedly here to discuss, which is the issue of wall sign and roof sign. He added that the Intent of Appeal is based solely upon the interpretation, noting that very brief reference and comments may be made with regard to those pages. He clarified that the appellant may express disagreement with something stated in the Staff Report.

Ms. Peplinksi expressed her disagreement with a determination that the appellant had arbitrarily decided to contradict the city staff. Referring to a significant delay in time frame from the application, she stated that the application had had counter review by two different planners who had discussed the submittal of the application at great length. She observed that the application itself states to allow four working days to process a permit, emphasizing that it had been three weeks before they had received any further comment. She noted that following that time frame, at which point they had assumed that everything was proceeding properly, the business had held a grand opening. Admitting that the applicant had made a very costly error, she declared that this had not been deliberate. She mentioned that the applicant had allowed the matter to go to court in an attempt to have some sort of a determination made. Noting that the whole situation has outraged her, she described what she considered negligence on behalf of the staff to handle her position. She stated that the initially referenced determination, PDI 98-001 had been rendered on July 15, 1998, adding that she had met with Mr. Bunnell on July 10, 1998, to request a determination on what constitutes a wall sign and what constitutes a roof sign. At that time he had indicated he would present this at a staff meeting on July 13, 1998.

Suggesting that she is getting a little off-track, Chairman Maks reminded Ms. Peplinski that he is still waiting to get to the meat of the subject, which is the appeal.

Ms. Peplinski noted that although the Planning Director's Interpretation had been rendered on July 15, 1998, she had not received notification until December 10, 1998, when Mr. Bunnell had turned down her site-specific Planning Director's Interpretation. Observing that her situation has not been properly addressed, she mentioned a comment made by Mr. Bunnell that this had been the application for sixteen years. She pointed out that she had been doing business in Beaverton for eighteen years and provided illustrations of signs ranging from over twenty years old to less than two years old that are, in her opinion, non-conforming.

Chairman Maks questioned whether copies of these pictures have been made available to staff, and Ms. Peplinski informed him that she had provided copies to Mr. Bunnell.

On question, Ms. Peplinski informed Chairman Maks that on this particular page of pictures, the only sign that meets the code presented by Mr. Bunnell in this interpretation is the sign located in the middle of the page. Chairman Maks clarified that this is Ms. Peplinski's interpretation, and she agreed that that is how she would interpret that picture.

She referred to a picture of the sign at Winco Foods, noting that it had been in process in the summer of 1998, immediately after she became involved, as well as a considerably older sign located at Elmer's Restaurant. She observed that the sign at the Beaverton City Library does not comply, contending that it is not a fair representation by Mr. Bunnell to state that this has been the interpretation for sixteen years

Chairman Maks expressed his concern that the appellant is getting off track.

Commissioner Johansen observed that this is becoming an interpretation of a specific situation.

Commissioners reviewed the pictures of signs submitted by Ms. Peplinski.

Chairman Maks pointed out that the signs used as examples, including that at the Beaverton City Library, are actually signs on walls. He explained his opinion of their interpretation, adding that as long as the sign is on a particular wall and it does not extend above the roof, there is not a problem. He expressed his opinion that the majority of the samples actually fit the interpretation.

Observing that she had been securing similar permits for eighteen years, Ms. Peplinski emphasized her job requires her to secure these permits from Seattle to Sacramento. She added that she is also responsible for dealing with clients and advising them what they are allowed by City Code. She reported that in all prior instances, when a permit is issued, the City staff always completes the comment section stipulating that the sign must not extend above the roofline. By their own written code determination, roofline is the edge of the building, or the top of the parapet, whichever forms the top line of the building silhouette. She expressed her opinion that this problem has been created by inconsistencies within the code.

Noting that he had not clearly understood the last part of her statement, Chairman Maks requested that Ms. Peplinski repeat the information.

Ms. Peplinski stated that when she goes to get a permit for a wall sign, the City staff writes in a comment line on her permit that the sign shall not be above the

roofline, adding that by their definition, the roofline is either the edge of the roof, or the top of the parapet, whichever forms the top line of the building silhouette.

Commissioner Heckman questioned where she had obtained the word silhouette.

Ms. Peplinski informed him that this wording had come from Chapter 90 – Definitions, and Chairman Maks clarified that this comes from the City's code.

Ms. Peplinski noted that several actions could have been taken to remedy this situation, which she has been dealing with for two years. Observing that she does believe in the process and the right of the public to be heard, she emphasized as long as she is allowed to give her input she has no complaint. She discussed her interpretation of the sign regulations, pointing out that they do not in any way preclude a structure that is mounted on the awning, as proposed. She expressed her opinion that a roofline is clearly defined in the July 1999 reprint of the sign regulations adopted in 1978. She stated that she believes that past practice does indicate clearly that the City has looked at the idea of the top line of the silhouette as what apparently form the building wall. No one has ever indicated that three-foot section of an awning is what composes her sign allocation, because sign allocation is, in fact, based on the square footage of the wall. One is allowed 20% of a wall, the wall allocation being from the ground to the top of the roof, or the top edge, where it meets the roof.

Chairman Maks cautioned Ms. Peplinski that the 20% issue is not an issue that can be addressed on this appeal.

Ms. Peplinski discussed what she considered an unreasonable and arbitrary stretch of definitions, specifically to now define the roofline as the line of an awning that is not structural. She expressed her opinion that this violates the equal protection rights under the 14th Amendment, in which it is fair to expect equal application of the regulation in any instance. She noted that she should always be able to inform a client that a sign is or is not allowed for a specific reason. She added that her client should not be able to look at very similar signs throughout the City while he is not allowed. She observed that the code has not changed, and public input would have been permitted in a code rewrite. Common definitions should be depended on, and definitions should not conflict within the scope of the written code. Ms. Peplinski concluded that this has been a frustrating experience for her, stressing that regulations must evolve through due process with public input and be reasonably and equitably applied. She noted that she has no confidence in the application of any submittal she makes, adding that she has not had this concern in any other municipality she deals with from Seattle to Sacramento.

Mr. Paulson explained the problems facing the sign industry over the last few years and drew pictures (Appellant's Exhibits 1, 2 and 3) illustrating usable square footage (20% of the wall) allowed for a sign, in different situations. He discussed a planning perspective of the code, particularly the location of a sign on

a wall, noting that he has been working with sign permits for 34 years. He mentioned that his company has been looking for someone to appeal this particular Planning Director's decision in an attempt to restore the code to a reasonable perspective.

Chairman Maks questioned Mr. Paulsen's interpretation of the Planning Director's Interpretation as being unable to place a sign on a wall higher than any roofline.

Mr. Paulsen described stepped facades of a building, that go in and out, noting that he believes this is a reasonable request, where there are different elevations of a building with different walls. He offered to provide a further illustration that further compounds the problem (Appellant's Exhibit 3).

Chairman Maks requested clarification of Mr. Paulsen's interpretation, specifically that Mr. Paulsen is interpreting that he can not place a sign on this step, as illustrated, adding that he is not certain that he agrees. He expressed concern that everyone has a different interpretation.

Mr. Paulsen observed that it varies from case to case. At the request of Commissioner Heckman, he drew another illustration (Appellant's Exhibit 3). He described multiple levels, noting the roofline. Mr. Paulsen drew what he described as a flat-front marquee, questioning whether that would be considered a roof.

Chairman Maks requested that Mr. Paulsen respond to his original question.

Mr. Paulsen drew what he described as multiple levels, explaining that the interpretation of the roofline is creating a problem.

Chairman Maks stated that his question had been answered.

Mr. Paulsen expressed his opinion that allowable square footage should make no difference where the sign is positioned. He noted that it is still the same square footage and the same number of signs, which is the purpose of the Comprehensive Plan – to control the number and size of signs. He commented that this is just another way to manipulate to make it fit another definition.

Mr. Keljo described a roofline as "either the edge of the roof or the top of the parapet, whichever forms the top line of building silhouette".

Chairman Maks requested that Mr. Keljo continue reading the definition of a roofline.

Mr. Keljo continued reading the definition of a roofline, as follows: "where a building has several roof levels, this roof or parapet shall be the one belonging to

that portion of the roof on which the sign is located." He noted that other jurisdictions he works with have a different interpretation, emphasizing that it should be irrelevant whether an awning is present to protect pedestrians.

Ms. Hennessy summarized by mentioning the dictionary definitions of a "roof", an "eave", and a "wall". She requested that consideration be given specifically to what an "awning" is. She questioned whether the Planning Commission intends to penalize property owners for erecting awnings to protect pedestrians in Oregon, noting that this is the result, with respect to awnings. If the awnings are removed, you can go 18 feet high on an 18-foot building.

Mentioning that he had heard a variety of definitions for different words, Commissioner Heckman noted that he had reviewed three dictionaries and an architect's handbook today and asked Ms. Hennessy which definition he should use.

Ms. Hennessy informed Commissioner Heckman that the appellant had used the definition from *Webster's Dictionary* as well as definitions from the City Code utilized by the Planning Director in his interpretation. She invited him to share any of the definitions he had found to determine whether awning is within the definition of a roof.

Commissioner Heckman questioned whether Ms. Hennessy usage of the word awning is in a generic sense.

Ms. Hennessy clarified that the Planning Director had used the word awning in his opinion, agreeing that in her briefs, she had continued to use the same generic word.

Commissioner Heckman mentioned an example the appellant had provided, specifically "Elmer's Restaurant", questioning whether she considers a porch roof to be a roof, as opposed to the roof of the main building.

Ms. Peplinski noted that it is her contention that the Planning Department would be calling the porch roof as a roof, as well as the eaves that are on either side of the signage on "Elmer's Restaurant". She expressed her opinion that this particular sign is a double violation.

Noting that he is not concerned with "Elmer's Restaurant" at this time, Commissioner Heckman informed Ms. Peplinski that he is interested in understanding her definitions.

Ms. Peplinski stated that she is attempting to determine how definitions are being presented by Planning staff.

Commissioner Heckman questioned whether Ms. Peplinski would agree that this particular building actually has two roofs.

Ms. Peplinski stated that she does agree that this particular building has two roofs.

Ms. Peplinski noted that the Planning Director had not provided any of this input and that she had taken the photos herself.

Commissioner Heckman referred to page 5 of the Staff Report regarding definitions, and discussed the situation at "Elmer's Restaurant", asking whether Ms. Peplinski considers the apparatus attached to a building being also a roof over a sidewalk.

Ms. Peplinski agreed, adding that this roof over the sidewalk is a sidewalk cover.

Commissioner Heckman questioned whether a rain gutter is necessary for an eave.

Ms. Peplinski stated that while it is typical, it is not, in her opinion, necessary.

Commissioner Heckman questioned Ms. Peplinski's opinion regarding the Planning Director's statement that a sign can project no more than 12 inches from a wall.

Ms. Peplinski advised Commissioner Heckman that she had not raised any issue with that particular definition.

Commissioner Heckman questioned whether the awning is part of the wall, part of the roof, or part of the structure.

Expressing her opinion that the awning is not part of the wall, roof or structure, Ms. Peplinski described the awning as an appendage attached to a wall, adding that it is non-structural and has nothing to do with the actual shell of the building. She commented that appendage, the awning, the canopy or the porch roof could all be removed and the building would remain structurally intact.

On question by Chairman Maks, Commissioner Bode commented that she prefers to postpone any questions or comments at this particular time.

Chairman Maks clarified that his direct reference to individuals who just put up signs was not necessarily directed only at the appellant. He noted that there are always problems with individuals putting up signs without going through the proper permit process. He observed that in his opinion of the Planning Director's Interpretation, 98% of the pictures presented as examples are in compliance. He discussed his understanding of the interpretation, specifically Ms. Peplinski's

reference to “visible plane of vision”, noting that this indicates that the sign is not extending above anything.

Ms. Peplinski agreed with Chairman Maks description of “visible plane of vision”.

Chairman Maks emphasized that a basic intent of the relevant sign policies in the Comprehensive Plan is to eliminate visual clutter, expressing his opinion that something extending above something else constitutes visual clutter.

Mr. Paulsen suggested that architecturally, this could be done in a manner that would look very nice. He questioned the possibility of locating a sign on the roof of the awning.

Observing that this is a good question, Chairman Maks noted that he could only provide his own interpretation on this.

Mr. Paulsen pointed out that one of the photograph samples that the appellant provided illustrates a sign on the roof of an awning.

Chairman Maks advised Mr. Paulsen that he is aware of this particular situation, adding that while most of the examples fall in the 98%, the rest of them don’t.

Ms. Hennessy questioned a wall sign meeting the 20% requirement.

Chairman Maks reminded Ms. Hennessy that the 20% is not the issue at this time.

Ms. Hennessy agreed, adding that it has to be consistent.

Chairman Maks commented that the bottom line is, if this is not a roof sign, then what is it? He added that the sign is also not within 12 inches of what the appellant is calling the wall.

Ms. Hennessy noted that the twelve inches is also not the current issue.

Chairman Maks agreed to not discuss the twelve-inch issue if the appellant does not discuss the 20% issue. He emphasized that the regulation calls for the sign to be flush up against a wall, whether the wall is a wall that is foundation to ceiling, or whether the definition of wall agrees with the definition in one of the many dictionaries in Commissioner Heckman’s possession. He pointed out that many interior walls do not extend from floor to ceiling. He informed Ms. Peplinski that he is not convinced by her arguments, adding that he agrees with staff’s determination that the appellant has a wall sign that is extending above a roof.

Ms. Peplinski discussed what she considers to be a very subjective statement on the part of the staff, that numerous buildings have been constructed with

something added for the specific purpose of allowing for a higher sign. She emphasized that it is not cost-effective to construct a $50,000 structure simply for the purpose of erecting a sign, expressing concern with conflicting interpretations.

Chairman Maks observed that the purpose of this hearing at this time is not to deal with consistency, but with the interpretation she just made with regard to her last statement, adding that this will hopefully lead to consistency. He agreed that certain individuals have created inventive means of getting around the code, noting that he does not appreciate this. He complimented her reference to "visible plane of vision", which he considers to be a great synopsis. He explained the intent of this particular interpretation as an attempt to avoid visual clutter.

Ms. Peplinski held up an illustration of her specific site, questioning what Chairman Maks observes in the visual plane of vision.

Chairman Maks stated that he sees a sloped roof.

Ms. Peplinski informed Chairman Maks that he sees the backdrop.

Chairman Maks repeated that he sees a sloped roof, noting that they have to agree to disagree on this particular issue.

Mr. Paulsen stated that a code is not going to address all issues, stressing that they are searching for a common definition of where the roofline really is, adding that exceptions to the rule always exist and that this may be one of them. He noted that this is a common problem encountered by the sign industry within the City of Beaverton.

Ms. Hennessy requested that the Planning Commission amend the sign code for clarity, requesting that they not strain the interpretation of what a roof is, as well as within this interpretation, define a roof as being the cover of a structure or a building. She noted that including the appendages to protect pedestrians is really stretching the language. She observed that she understands what the City is attempting to accomplish, but that it should be done in a clear, objective, and universally applicable manner.

Chairman Maks observed that the City is in the middle of a periodic review, noting that because the sign extends above the roof, the specific site she is addressing constitutes visual clutter in his opinion. He stressed that he has no problem accepting the Planning Director's Interpretation.

Commissioner Voytilla questioned Ms. Peplinski, referring to a diagram provided by the staff (Staff Exhibit 'A') and requested that she clarify her definitions of "roof", "eave" and "wall".

Ms. Peplinski indicated that what the City considers a roof is the roof of the awning, not the roof of the building, and that what the City considers a wall, is merely the front of the awning. On question by Commissioner Voytilla, she stated that these terms pertain to the "awning", rather than the structure itself. She described awning as a rooflike cover to something below. She informed Commissioner Voytilla that there is no fabric on this structure, adding that it consists of sheet metal and wood, and does not fit her definition of awning, which had been the City's term. She disagreed with the City's interpretation of a wall, expressing her opinion that although a wall may not extend to a roof; it does start at the foundation and is a partition of something.

Commissioner Voytilla clarified that he is specifically attempting to determine whether Ms. Peplinski is in agreement with the City that this be considered a canopy, rather than an awning.

Ms. Peplinski advised that the extent of the definition she would agree to on this particular structure is "a rooflike structure".

Commissioner Voytilla referred to Ms. Peplinski's statement that this unfairly penalizes an applicant for providing protection to pedestrians, requesting clarification.

Ms. Peplinski referred to a communication dated September 1, 1999, from Suzanne Savin, formerly of the City's Planning Staff, indicating that portions of canopies and awnings are considered walls for the purposes of allowing placement of signs, if, in fact, those exist as a portion of the wall. She advised that because they are an attachment to the wall, this is how Ms. Savin addressed the situation, adding that sometimes that attachment to the wall forces sign placement at another location. She expressed her opinion that this does not change the building silhouette, adding that the City had gone one step beyond the definitions and one step beyond the original Planning Director's Interpretation of 1998. She emphasized that this has created a huge penalty for the business owner.

Commissioner Voytilla noted that a business owner has the option of making a modification to the architecture of a building to accommodate a sign.

Ms. Peplinski stated that by removing the canopy, the business owner could accommodate the requested sign.

Commissioner Voytilla mentioned that he had not mentioned removal of the canopy, he had merely suggested that modification to the building is an option.

Ms. Peplinski questioned whether he is referring to create less of a slope to the canopy.

Explaining that this is one option, Commissioner Voytilla pointed out that there are several options available.

Ms. Peplinski observed that without removing the awning, this would not affect the interpretation of wall.

Commissioner Voytilla reminded Ms. Peplinski that he is attempting to not discuss one application in particular.

Ms. Peplinski referred to the sample photographs, specifically that of a dry cleaners sign, noting that the front surface of the canopy has now become the allowable wall surface.

Commissioner Voytilla explained that with awnings, canopies or any architectural element of a building, either in an existing building or a building being designed, signs are only one component of the building.

Ms. Peplinski agreed with Commissioner's Voytilla's statement that a sign is only one component of a building.

Commissioner Voytilla observed that a potential business owner must consider all of the necessary parameters of a business and the location, including advertising and signage. He added that a prudent individual would make a determination of whether a site will work or what can be done to make it work.

Ms. Peplinski stated that in her opinion he is making reference to subverting the code.

Commissioner Voytilla repeated that an individual considering going into business determines ahead of time that they have everything necessary to support the goals of this particular business, only one of which is signage. In the event of deficiencies, in order to achieve this goal, one must consider how to meet the requirements of the code as well as the needs of the business owner.

Ms. Peplinski agreed with Commissioner Voytilla, expressing her opinion that an architect designing a building could not be confident what the signage needs may be for a client.

Commissioner Voytilla disagreed with Ms. Peplinski, noting that Chairman Maks has already pointed out that the vast majority of her examples are in compliance and were obviously done by competent designers, architects and sign people.

Mr. Paulsen noted that people do make reasonable assumptions, and that as written, the code would lead one to assume that a sign can be placed on a flat wall, and not have the roofline, if it is six foot down from behind that wall, one would assume that one could put that sign on the wall.

Commissioner Voytilla reminded Mr. Paulsen to stick to the focus of the hearing.

Mr. Paulson emphasized that this is the roof sign issue, and that as the code is written, one can not determine where the roofline is.

Commissioner Voytilla advised that the hearing must adhere specifically to the issue that is on appeal, which are not wall signs, but the interpretation of these particular items.

Mr. Paulsen expressed his opinion that reasonable people can not read this code and interpret it, as written.

Commissioner Voytilla expressed his appreciation of the experience exhibited by the appellants and referred to Ms. Peplinski's statement that she had not encountered problems in other jurisdictions.

Ms. Peplinski clarified that she had not indicated that she had not encountered problems in other jurisdictions, but that she had not dealt with the inconsistencies in other jurisdictions. She added that she has filed both appeals and variances from Seattle to Sacramento.

Commissioner Voytilla questioned her experience with inconsistencies.

Ms. Peplinski repeated that she had never dealt with inconsistent interpretations in other jurisdictions.

Commissioner Voytilla noted that Mr. Paulsen had stated that the sign industry had experienced this becoming more of a problem in the past few years.

Mr. Paulsen emphasized that this has been more of a problem only in Beaverton the past few years.

Commissioner Voytilla questioned whether the problem exists only in signs proposed for new construction, signs proposed for new locations, or if it is a retrofit situation.

Mr. Paulsen informed Commissioner Voytilla that all these situations present a problem.

Commissioner Voytilla questioned whether the situation creates a problem consistently.

Mr. Paulsen agreed that this is a consistent problem.

Commissioner Voytilla requested clarification of Mr. Paulsen's statement that they had been waiting for someone to appeal an issue such as this.

Mr. Paulsen noted that this interpretation had been a constant source of frustration.

Commissioner Voytilla observed that there are alternative means for dealing with this situation.

Mr. Paulsen stated that Mr. Bunnell had informed them that in order to change the law, or the code, they would have to put up $10,000 to notify all property owners, adding that they had attempted to find a less expensive means to achieve their goal. He added that they hope that common sense will prevail and the City can return to the common sense definition they started out with.

Noting that this is an appeal of the Planning Director's Interpretation, Chairman Maks questioned the possibility of a ruling in favor of the appellant and whether this would mean that the Planning Director's Interpretation can again be appealed.

Mr. Sparks explained the appeal process, noting that there is a 10-day period from the date of the Notice of Decision during which it can be appealed.

Chairman Maks observed that if the Planning Director makes another interpretation and it is appealed, the Planning Commission would again be in the exact same situation. On question, Mr. Sparks agreed that code is not being adopted at this point and future interpretations on the same issue could be requested and appealed.

Mr. Paulsen noted that based on the decision made two years previously, it had been made citywide.

Chairman Maks pointed out that this is citywide also, until it is appealed again. He emphasized that what he is attempting to clarify is that this Planning Director's Interpretation is not adopting code.

Mr. Paulsen stated that he is aware that it is merely an interpretation.

Chairman Maks agreed, adding that this interpretation is in effect until it is appealed again.

Mr. Paulsen observed that they are attempting to reach a point where they don't have to appeal it again.

Chairman Maks advised Mr. Paulsen that even if the ruling is in favor of the appellant, it will not be written in stone.

Ms. Peplinski expressed her opinion that this particular Planning Director's Interpretation can not again come under appeal, adding that the appeal period is over and it would be a new Planning Director's Interpretation that would be the issue under appeal.

Chairman Maks advised Ms. Peplinski and Mr. Paulsen that he wants them to be aware that this particular interpretation may not provide the clarity they are seeking.

Mr. Paulson mentioned that they had attempted to start at this level to avoid the expense of LUBA appeals.

Chairman Maks suggested that the appellants provide input in the upcoming code review, allowing them the opportunity to make changes that will provide clarity within the code that is not subject to the next appeal.

Commissioner Bode requested that Ms. Peplinski illustrate at the staff drawing (Staff Exhibit 'A'), in a color other than blue or black, her own interpretation of where a sign can be placed.

Ms. Peplinski indicated on the drawing (Staff Exhibit 'A') with a pink marker pen where she interprets the roofline and wall line to be located and explained the basis of her interpretation.

Noting that she had only indicated a roofline and a wall line, Commissioner Bode asked again where Ms. Peplinski would locate a sign.

Commissioner Bode clarified that the long pink line going down on the picture (Staff Exhibit 'A') is the wall, while the pink line across the top is the roof.

Ms. Peplinski agreed with Commissioner Bode's assessment of the wall and the roof.

Commissioner Bode questioned the proposed location of the sign by Ms. Peplinski, noting that the sign does not touch the surface of the wall or the roof.

Ms. Peplinski noted that she proposes to locate the sign on the awning, which is an appendage, adding that the definition from September 1999 indicates that when an appendage is in the way, the sign (that is classified to be a wall sign) may be customarily placed on that appendage. She discussed the rain in Oregon, pointing out that these appendages are common – a service to customers.

Commissioner Bode questioned Ms. Peplinski's overall reason for erecting a sign.

Ms. Peplinski described this sign as a form of advertising for the business.

Observing that he agrees with Chairman Maks' assessment that many of the pictures depict signs that are in compliance with the regulations as it is defined, Commissioner Wolch added that some do not. He asked Ms. Hennessy whether she is aware of whether permits were issued for those that don't appear to be in compliance, adding that often there is a continuum of regulations where they are changing, and depending upon when an application was submitted, it could possibly be different, even non-conforming. He observed that the City does not go back and make former applicants change everything to comply with the current code. He stated that it is unlikely that anyone will ever review and find everything within the City to be absolutely consistent. He questioned whether she is knowledgeable of whether the applicants actually went through the sign process and were issued permits.

Ms. Hennessy observed that the current sign regulations, as they exist, have been in effect since 1978, for over 20 years, particularly the prohibition of roof signs. She stated that she has not actually checked for a permit associated with each photograph that has been submitted. She repeated her concern with inconsistencies, noting that the City is in the process of revising their code and should include language that provides clarification.

Noting that the City is attempting to apply a regulatory code with staff in charge of interpreting that code, Commissioner Wolch expressed his opinion that staff should be deferred to in their interpretation, in the absence of any court decision or direction. He mentioned that although it is possible to disagree with staff, their interpretation should carry a lot of weight in the absence of any other direction to the contrary.

Ms. Hennessy emphasized that the appellant is not attempting to discredit the planning staff, adding that she is certain they are well qualified. She expressed her opinion that they are not going about things in the proper direction. She added that while planning staff provides input, the Planning Commission actually establishes policy, with the final decision up to the City Council.

Commissioner Dunham referred to the definition of roofline, and questioned how the appellant is applying roofline to this interpretation.

Ms. Hennessy circulated a picture to illustrate the roofline and explained her interpretation. She noted that the elements drawn to the side are not a silhouette, but the side view, adding that essentially the top edge of a silhouette is the very peak of a roof. In this instance of a flat roof, no peak exists.

Ms. Peplinski mentioned consistency with the 1998 Planning Director's Interpretation, which was not appealed and does not include the parapet, it would be possible to come down six to twelve inches and be consistent with the flat roof and still be in compliance with where the sign comes out.

Ms. Hennessy discussed the issue of a wall surface being a vertical surface in this case, indicating where it would then be located.

Ms. Peplinski commented that this wall is not a 3-1/2 foot wall suspended in space, adding that a wall extends from a roof to a foundation. She mentioned her understanding of Suzanne Savin's interpretation that the sign be allowed to be extended out in the event of an awning or some type of protective covering.

Ms. Hennessy emphasized that this is where the difference remains.

8:54 p.m. – Chairman Maks called for a break.

8:59 p.m. – the Public Hearing resumed.

Ms. Hennessy requested that all photographs submitted at the meeting be included in the record.

Chairman Maks assured Ms. Hennessy that all photographs would be included in the record.

Commissioner Heckman informed Chairman Maks that he has no questions or comments at this particular time.

Chairman Maks stated that he has no further questions, asking if anyone has any final statements or comments.

Ms. Peplinski referred to the citywide interpretation, emphasizing that two years later she is still dealing with this problem. She emphasized that she wants to resolve the problem on a long-term basis, rather than site-specific. She mentioned that she should have received direct notification that would have directed her to be present at the initial PDI Appeal in July 1998.

Ms. Hennessy referred to the 1998 interpretation, noting that this proposal is consistent with this interpretation which specifies no roof signs on a flat roof. She urged Commissioners to review the definitions in the interpretation and not allow them to remain so internally inconsistent.

On question, no one in the audience had any further comments or questions regarding the Public hearing.

Mr. Bunnell stated that no language in the current code permits signs on awnings or canopies. He explained that many years ago and several Planning Director's ago the interpretation has been that if signs were allowed on canopies or awnings, they would be wall signs, which is why the vertical portion of the drawing is identified as a wall – to allow a wall sign. There is no provision for awning signs or canopy signs. Noting that wall signs are allowed, he emphasized that roof

signs are prohibited. He clarified that the definition of roofline is not tied to roof sign. He referred to page 5 of the staff report, specifically the definition of roof sign, as follows: "a sign erected, maintained and displayed above the eaves of a building or structure". He pointed out that this does not say above the roofline – it says above the eaves. He added that the Planning Director's Interpretation of July 15, 1998 describes a roof sign as "a sign that extends above the height of a roof in the event of a flat roof, or above the eaves of a roof in the event of a slope roof, regardless of whether a parapet extends above the roof". He emphasized that a roof sign is a sign that extends above the eaves or the flat roof, not above the roofline. He added that it might, coincidentally, be at the roofline. He discussed the examples provided by the appellant, noting that many of them do comply with the City interpretation of sign regulations. Noting that no provision is made for a sign on an awning or a canopy, he suggested comparison to a service station canopy – a flat roof, with maybe a two-foot wall face on the canopy. The wall does not extend completely to the ground, but there is really no choice what to call it if signs are to be allowed on them. There has to be a wall to accept a wall sign. He noted that the wall is a different wall than the building wall by virtue of the fact that it is over 12 inches from the building. He explained that a sign could not extend more than 12 inches from the wall that it is on, so a sign on an awning could not be considered attached to the main wall – it has to be a sign on the wall of the awning. He agreed that it is possible that a past Planning Director could have made an interpretation that awnings and canopies can not accept signs because no provision in the code applies to signs on those structures. He added that informally the interpretation has been that those structures have walls on which wall signs could be placed, which is what the last two Planning Director's Interpretations have intended to clarify.

Commissioner Voytilla questioned whether the signs depicted in the pictures submitted by the appellant are located within the City of Beaverton.

Mr. Bunnell agreed that he believes that all these particular sites are located within the City of Beaverton, adding that most appear to be in compliance, although he did notice one that he believes mistakenly received a sign permit.

Chairman Maks observed that he now has a greater understanding of the position of the sign industry, and discussed interpretation and application of the code. He explained that at his business in Vancouver, Washington, signage on the wall section of the awning of his building counts against the foundation wall of his building in his square footage.

Mr. Bunnell discussed his interpretation, noting that there is a base allowance no matter where the sign is located. He explained that it is either subtracted from the base as one elevation or subtracted from the base as two walls, with the same end result – a percentage of the signage is allowed on the canopy wall and a percentage of the signage is allowed on the main wall.

Chairman Maks observed that he is not allowed to split his signage on the main wall into two signs, because there is also a limit to the number of signs allowed.

Assistant City Attorney Naemura clarified several definitions concerning the interpretation of the sign code. He defined a wall sign under the development code on DF 29 as "a sign attached to, erected against or painted on a wall of a building or structure", emphasizing the term "or structure", which is defined under code on DF 27 which discusses structure as "anything which is constructed, erected or built and located on or under the ground or attached to something fixed to the ground". He clarified that both awning and canopy are considered attached, in a sense.

Being no further testimony or comments regarding this public hearing, Chairman Maks closed that portion of the hearing.

Commissioner Wolch expressed his support of the Planning Director's Interpretation of the sign code, emphasizing the intent to reduce visual clutter within the City of Beaverton and improve the appearance of the City. He noted that he would support a motion to deny the appeal.

Commissioner Voytilla expressed appreciation of the experience exhibited tonight, adding that he feels comfortable with information provided by the staff as well as their interpretation of the sign code. He stated that he supports the Planning Director's Interpretation of the sign code, requesting that the appellant attempt to work with the staff to address their concerns and come up with solutions for clarification. He emphasized the intent of the Comprehensive Plan, to eliminate visual clutter.

Commissioner Heckman expressed his agreement with Commissioners Wolch and Voytilla, as well as his opinion that each situation must be determined separately. Noting that while he is not always happy to be in this position, he does support the Planning Director's Interpretation of the sign code.

Commissioner Bode expressed concern that there was no "meeting of the minds" between the owner of the building, the company responsible for the work and the City of Beaverton. She noted that a great deal of time has been expended on the issue of one sign and pointed out that the appellant's presentation had been inconsistent. She expressed her support of the Planning Director's Interpretation.

Commissioner Johansen expressed his support of the Planning Director's Interpretation, which he believes is consistent with the Comprehensive Plan.

Commissioner Dunham emphasized that the spin on definitions had created a great deal of controversy and discussed the goals of the Planning Commission, which include the enhancement of the appearance of the City of Beaverton and concern with visual clutter. She expressed her agreement with the Planning

Director's Interpretation and support of denial of the appeal. She noted that she is concerned with the estimated 2% of the signs that are not in compliance.

Chairman Maks expressed his appreciation of the position of the appellant's having to explain the denial to the customer, who naturally expects answers. While he agreed with the appellant's concern with clarity and consistency in interpretation of the code, he reminded those present that it has been his responsibility to focus on the issue of the appeal. He noted that while clarity and consistency is his main concern in code review, he agrees with the Planning Director's Interpretation. He observed that he had been able to reach the Planning Director's Interpretation given the definitions in the code and that the assistance of the *Webster's Dictionary* definitions had not been necessary, concluding that he feels comfortable backing up the interpretation with the existing code without the assistance of any additional sources. He emphasized that many of the arguments presented tonight will be considered at Code Review, adding that he hopes that the appellants will provide input at Code Review.

Commissioner Wolch MOVED and Commissioner Voytilla SECONDED a motion to deny APP 2000-0001 – Wall and Roof Sign Appeal, based on the facts and findings of the Staff Report dated February 16, 2000.

Commissioner Heckman requested that the motion be amended to include that the Planning Director's Interpretation be upheld.

Commissioner Wolch MOVED and Commissioner Voytilla SECONDED a motion to amend the motion to deny APP 2000-0001 – Wall and Roof Sign Appeal to include the following: "and that the Planning Director's Interpretation be upheld".

Motion, as amended, CARRIED, unanimously.

MISCELLANEOUS BUSINESS:

Chairman Maks reminded Commissioners that no meeting is scheduled for next week.

Meeting adjourned at 9:30 p.m.